



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

AMENDED  
DECISION

(petitioner)

MRA-3/56050

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 19, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to the spousal impoverishment provisions of the medical assistance program, a hearing was held on January 30, 2003, at Barron, Wisconsin.

The issue for determination is whether the petitioner can become eligible for institutional medical assistance and if so whether he may allocate a portion of his income to his spouse.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Denise Westin, ESS  
Barron County Dept Of Human Serv  
Courthouse Room 338  
Barron, WI 54812

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of an institution in Barron County.
2. The petitioner's spouse lives in the community.
3. The petitioner and his spouse have approximately \$35,000 in assets.

4. The petitioner receives \$367 from social security, \$960 from a pension and \$2,320.76 from an annuity each month.
5. The petitioner's spouse receives \$247 from social security each month.
6. The county agency denied the petitioner's request for institutional medical assistance under a medical assistance waiver because his income exceeds the program's limit.

### **DISCUSSION**

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that the spouse does not fall into poverty. *See* §49.455, Wis. Stats., and 42 U.S.C. §13964-5. A person who, like the petitioner, seeks funds through one of the waivers programs is considered institutionalized. The minimum monthly maintenance needs allowance currently is the lesser of \$2,232 or \$2,020 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$606. *Id.* The petitioner receives \$3,547 from social security, a pension and an annuity each month, and his wife receives \$247 from social security. She has no excess shelter costs, so she requires \$1,773 of the petitioner's income to bring her income up to the \$2,020 minimum monthly maintenance standard. The problem is that as a waivers applicant the petitioner is ineligible for medical assistance if his income exceeds \$1,635. *MA Handbook*, §30.5.0. Because his income is more than twice that amount he cannot become eligible even if this causes a hardship on his wife. I understand that the petitioner and his family will find this unfair, but I am required to enforce the rules as they are written. Those rules clearly bar the petitioner from receiving medical assistance.

### **CONCLUSIONS OF LAW**

The petitioner is ineligible for institutional medical assistance benefits under a waiver program because his income exceeds the program's limit.

**NOW, THEREFORE, it is** **ORDERED**

That the petition herein be and the same hereby is dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 19th day of  
March, 2003

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/s/Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
41/MDO